

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. I further ask that following that vote, the Senate proceed to S. Res. 33 reported today by the Judiciary Committee regarding National Military Appreciation Month, and the Senate proceed to vote on the resolution without further debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. I ask consent it be in order for me to ask for the yeas and nays at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, I now ask for the yeas and nays on adoption of S. Res. 33.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LOTT. There will be two rollcall votes on Friday beginning at 10 a.m. I thank my colleagues for their consideration of these issues.

As a result of the agreement outlined, there will be no further votes today. In addition, I am working with the minority leader, Senator McCain, and others to reach an agreement for consideration of the resolution Senator MCCAIN introduced regarding Kosovo. That could involve other votes or other resolutions. For now, we are working on exactly when the MCCAIN resolution would come up. I hope the Senate can reach consideration on this matter in early May. I expect a little debate yet today on the pending lockbox issue.

RECESS

Mr. LOTT. In light of a briefing that is ongoing, a very important briefing in the secure room with regard to the conflict in Kosovo, I ask that the Senate stand in recess until 4:30 so all Senators can attend this briefing.

There being no objection, the Senate, at 3:42 p.m., recessed until 4:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. GORTON].

The PRESIDING OFFICER. The Presiding Officer, in his capacity as a Senator from the State of Washington, notes the absence of a quorum.

The clerk will call the roll.

The legislative assistant proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONGRATULATING THE ST. PIUS DECATHLON TEAM

Mr. DOMENICI. Mr. President, with the recent tragic events in Colorado, it's good for us to remind one another that there are a lot of terrific young

people out there accomplishing great feats involving teamwork, academic study, and a lot of guts.

That's why today I want to salute the St. Pius High School academic decathlon team from my hometown in Albuquerque, NM. The St. Pius students just finished in 7th place at the national academic decathlon finals in California. That's the best finish New Mexico young people have ever scored at the decathlon nationals.

One of the St. Pius team members said it best about the contest. He said it's the only competitive event in high school where your best chance of winning involves going home and reading a book.

These outstanding young people were tested based on their knowledge and scholastic skills in fine art, music, history, economics, mathematics and literature.

It is with great pride that I salute the St. Pius decathlon team and their accomplishments. Congratulations to team members Caleb Benton, Nicholas Jaramillo, Stephanie Piegzik, Dennis Carmody, Mark Mulder, Matt Spurgeon, Louis Rivera, Ben Sachs, Jesse Vigil and their coach James Penn.

THE PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. I thank the Chair.

(The remarks of Mr. DOMENICI pertaining to the introduction of S. 925 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

THE FLAWED ENDANGERED SPECIES ACT

Mr. DOMENICI. Mr. President, I rise today to share with my fellow Senators an extraordinary exchange that occurred last week in the Interior Appropriations Subcommittee when they were conducting a hearing under your chairmanship regarding the year 2000 budget for the Department of Interior.

As some of you here may know, Secretary Babbitt and I, while both being from adjacent Western States, have not agreed on a lot of land management, water, and endangered species issues affecting the West. However, last Thursday a most unusual and enlightening thing took place. We both agreed that, regarding the impact of the Endangered Species Act on desert States like New Mexico, the current implementation of the law does not work.

I ask unanimous consent Secretary Babbitt's testimony be printed in the RECORD. It is not yet an official record because the entire transcript has not been completed, but it is a literal translation of what he said that day.

There being no objection, the testimony was ordered to be printed in the RECORD, as follows:

DEPARTMENTS OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2000

THURSDAY, APRIL 22, 1999

U.S. SENATE, SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS, Washington, DC.

The subcommittee met at 9:33 a.m., in room SD-124, the Dirksen Senate Office Building, Hon. Slade Gorton (chairman of the subcommittee) presiding. Present: Senators Gorton, Stevens, Cochran, Domenici, Burns, Campbell and Byrd.

UNEDITED PARTIAL TRANSCRIPT

Senator GORTON. Senator Campbell?

Senator CAMPBELL. Mr. Chairman, Senator Domenici has to—he has another very tight commitment.

Did you want to ask a question before I go?

Senator DOMENICI. I would really ask if I could ask two questions. I have to preside at a committee hearing at 10:00 o'clock, and I will be a little late to that.

Senator GORTON. Fine, fine. Go ahead.

Senator DOMENICI. Thank you.

Mr. Secretary, I am going to submit some questions to you with reference to the drought in the State of New Mexico, which will essentially be asking you if you can make sure there is a coordination of all of the federal agencies, some under you, as to what might be done.

We are—we are clearly—I do not know if you know this, but we are destined this year to have the worst drought we have ever had. Our rivers are going to run dry, and a lot of things are going to happen that are very, very bad. And I will ask you about that in detail.

But now I want to raise an issue that is related to the drought and share it with you with reference to the Endangered Species Law, and I think you are aware of this.

Mr. Secretary, New Mexico, like Arizona, is a very arid state. Folks here in the Beltway are primarily unaware of the critical needs for water out there in the West. We are very grateful that you come from out there and you know about these needs.

With the lack of snow pack and precipitation in New Mexico, we are going to have a drought. In fact, parts of the Rio Grande River which you are familiar with, which historically has gone dry at various times, may dry up as early as this week, believe it or not.

The traditional stresses of water users are only made more difficult by litigation regarding the needs for the silver minnow endangered species. A recent notice of intent to sue by the Forest Guardians and others—that is an entity in New Mexico—threatened to force the release of stored water in any of Heron, El Vado, Abiquiú, and Cochiti Reservoirs to maintain—quote, "to maintain the riparian habitat necessarily for the survival," of the silver minnow and the willow flycatcher.

I am concerned about water necessary for the survival of New Mexico, our cities which use that water, our irrigators which have—as you know, under our water system, they have primacy as per the time they applied it to the ground, and they own much of that water.

In the lawsuit which sought to force immediate critical habitat designation, you, as the Secretary of Interior, in the lawsuit which I will make available to you, you argued that the Department did not have the data necessary to determine water amounts needed for the fish.

Fish and Wildlife Service Director Rappaport-Clark stated in an affidavit that: The Service must comply with NEPA requirements and perform an economical analysis of the impacts. The EIS would likely be needed which would require more time for the habitat designation. The Environmental—the ESA requires that the Service, when designating critical habitat, take into consideration the economic impacts of specifying any particular area as critical.

I wonder if you would share with the committee, as soon as you can, answers to the following questions, and if you could answer them right now, it would be very helpful.

Secretary BABBITT. I would be happy to. I would be happy to.

Senator DOMENICI. Without scientific data available for the minnow, water needs, nor reliable economic analysis, will not the Department need additional time to follow through and find out what the needs are? You have stated that in the lawsuit, but would you tell the committee if that is the case?

Secretary BABBITT. Well, Senator, if I may—

Senator DOMENICI. Please.

Secretary BABBITT. I would like to step back and frame this issue and then specifically answer your question.

Senator DOMENICI. Sure.

Secretary BABBITT. Senator, I do not think it is any secret that we have not had much luck in our relationship in finding common ground in New Mexico.

Senator DOMENICI. No.

Secretary BABBITT. But this is another tough problem being served up, and let me just say that notwithstanding our failures in the past, I intend to do everything I can to see if we can work our way through this.

Now, let me say this also: I believe that our failure to work out a reasonable relationship is in some ways due to the underlying fact that in New Mexico, more than any other western state, including Alaska, Colorado, Montana and Washington, these issues are characterized by intransigence on both sides.

I have never worked in an environment in which the natural resource users have been so rigid and inflexible; and I would say exactly the same thing of the environmental groups. Now, it is in that context that we must deal with this problem.

I have voiced my concerns about the way that we are mandated to use the designation of critical habitat under the Endangered Species Act. It does not work. It does not produce good results. It should be modified, because the Courts are driving us to front-end determinations which, more properly, should be incorporated in recovery plans at the back end when we, in fact, have the information.

Now, the Courts have laid out a set of case decisions here that have put us in a strait-jacket. They are not going to give us the kind of time we need because the Act does not allow it. So that is just the bottom line.

Do we need more time? Yes. But the Endangered Species Act does not give it to us. The Courts do not give it to us. And we are going to proceed with declaring critical habitat. I would prefer not to. It is a—it is not productive. It is incendiary, and it will be in this case.

Now, finally, let me say, and then I will back off, that I believe that there are solutions available here. It is going to take some movement by those middle ground irrigation districts. They do not have a reputation for water use efficiency. And there are many

ways, I believe, that we could work something out. They have not shown the flexibility that we have found in other places, like in Eastern Washington, in Colorado, and elsewhere.

The environmentalists may, in fact, be making—not “may, in fact,” but are, in fact, making some unreasonable demands about their version of what the hydrology of the Rio Grande Valley ought to be like.

I would like to continue attempting the work. I have talked with the Bureau of Reclamation. I believe we have some water resources that are going to allow us to stagger through this season, with a little bit of flexibility.

Senator DOMENICI. Thank you very much.

I know I used a lot of the Committee's time.

But I compliment you on your statement, and—while I do not necessarily agree with you characterization of my fellow New Mexicans as being intransigent and the worst in America, as you have just phrased it, but—but I do believe that something is terribly bad in the way the Courts are handling this situation because you have to close down a river to users without knowing what the habitat—what the water is needed for the—what water is needed for the endangered species.

It is an impossibility. Maybe we could fix that here. It probably would bring the world down on our necks, even if we tried to do what he suggested. But we ought to think about that.

Let me make sure that everybody understands the seriousness of this problem. I grew up within eight blocks of this river. And for many years of my younger days, I used to walk to this river, and many times it was dry.

So for those who are used to rivers in your state or in Alaska that run all year long and were having arguments about salmon fish habitat, we do not have that. We have a river that, for much of the time, does not have any water in it.

On the other hand, we built storage places that make it better now. We do have more water, and we have a different water system than most of you. Our water system is based upon: The first one to use it and apply it to a beneficial use owns it, and they own it as of the date they did it. And they are valuable; you can sell those rights.

Now, the problem we have is that the endangered species comes along with litigants who know how to use the Courts, and they say, regardless of those water rights, you have to save the fish, the minnow.

Now, the minnows have survived, I believe, during eras that I have told you about. When there is no water running in the river, they have survived in some other place in the river where there is water.

And now what we have is a drought and rivers that do not always run wet, and we have at the worst possible time a lawsuit against him and his Department saying, “Create an endangered species, Mr. Judge,” and now ordering them to try to get water out of the reclamation projects, even if they have to dump our lakes that are there for irrigation purposes and other things, to save the minnow.

Now, that is a very frustrating position for a state to be in, and for a Senator, when the Endangered Species Act is a national law. And I do not know whether we want them to go to court and see if they really have water rights under the Endangered Species Law.

That is a nice question. And everybody has been kind of dancing around it, except for a

couple of courts—you could guess where—from California, California Circuit. They have kind of ruled that they have water rights even though they are not part of New Mexico's water ambiance at all.

The Secretary is indicating that perhaps people have been intransigent regarding their water rights. I can tell you they may have been. But if you were under the gun all of the time about whether you are going to have enough water even though you own it, you would be kind of nervous about sharing it with anybody.

And I think that is kind of what happened, and then put on the 800,000-population city which gets its water from an underground aquifer that is fed by this river, and they own a lot of water in order for their future, and you have a real tough situation. So I may need the Senators' assistance.

But I will tell you for now, Mr. Secretary, I hope you are not alluding, in terms of intransigence, to your and my difficulties earlier in your Secretarial term. They are there, and they are acknowledged, and they will kind of be wounds for a long time on both of us.

But this is a new ball game with a new problem, and I clearly intend to work with you if you will work with me to see if we can find a way to get through this on a temporary basis until we can fix it up in some permanent manner.

Thank you very much.

Senator STEVENS. Senator, would you yield just for one minute?

Senator DOMENICI. I am finished. Thank you.

Senator STEVENS. My friend, I think that is the most enlightened statement about the Endangered Species Act that I have heard from any Administration official since that act was passed, and I was here when it passed. And I am going to get a copy of that, and I do believe that we can work on that basis.

Mr. DOMENICI. Secretary Babbitt's testimony could open the door to some changes in the Endangered Species Act and may permit all parties to work together. I am submitting, as I indicated, this unedited transcript from the hearing for the RECORD. The Secretary's remarks are very significant because they acknowledge that this law, however well intentioned, is not working as it should. I hope we can begin serious work on improving the Endangered Species Act, certainly as it applies to dry States where water is very much in demand and where we have an imposition on those waters by the Endangered Species Act as it is currently being implemented.

Just last month I indicated that people and people's needs should come before the minnow, which is an endangered species in this particular Rio Grande river valley. I wrote a letter to editors of papers in our State, which appeared in multiple newspapers around New Mexico, saying it is now time to face the devastating impacts of laws such as the Endangered Species Act on people in a desert State like New Mexico, particularly in the area of water.

I got some real arguments and some flak for writing that letter, but I also got some very enlightened commentary on the problems facing an arid

State, and I am pleasantly surprised to find that Secretary Babbitt has contributed to the debate in a very constructive way.

New Mexico, my home State, is very dry. I have found that people within the beltway and in eastern America are unaware of the critical need for water in the West. With the lack of snow pack and precipitation in our State this year, we are facing a severe drought this summer. In fact, parts of the Rio Grande River, the largest river in our State, which runs from north to south and through the city of Albuquerque and many other communities, which has historically gone dry at times—this river is already drying up, even this early in the season.

My discussion with Secretary Babbitt was extremely timely, since my office received a call this past weekend from the Fish and Wildlife representatives saying they were out trying to find out what was happening to the endangered silvery minnow in the dry stretches of the river.

You see, the traditional tension among water users is not only exacerbated by litigation regarding the needs of the endangered silvery minnow, but also obviously exacerbated by all conflicting water needs when you are in a drought period.

In a lawsuit filed by the Forest Guardians and Defenders of Wildlife, a recent 10th Circuit Court of Appeals decision ordered an immediate critical habitat designation for the Rio Grande silvery minnow. The practical effect of this determination is the fish may get too much of the limited water in the river and some human users may not get any.

A Federal district judge in New Mexico allowed a few more months for the designation, but the lawsuit only dramatizes the growing conflict between the Federal Endangered Species Act and water for Rio Grande users. Secretary Babbitt agreed.

I asked the Secretary whether the Interior Department had sufficient data to determine the true water needs to sustain the silvery minnow in the Rio Grande River in New Mexico or to make an accurate economic and social assessment of the critical habitat designation on existing water rights owners.

In States like New Mexico, people actually own a proportionate share of the water in a river basin. All of those owners and their rights are predicated upon State law, which says if you put water to a beneficial use and continue to use it over time, you own the water rights that you have moved off the river and used. From the time you first applied water to beneficial use, you become a priority owner of the water as of that time.

Secretary Babbitt replied that his Department does not have sufficient information, but it has no choice but to act because of Federal court orders.

Secretary Babbitt stated that the Endangered Species Act does not work. He hoped that it could be modified to prevent court-ordered, unscientific, premature determinations. The courts need to give the Interior Department time to gather the data to develop a workable plan for habitat designation.

He does not have that data necessary to make a valid, critical habitat designation, and the courts, in trying to follow the act, are not giving him the necessary time. He will be forced to proceed, perhaps, with declaring a habitat. He also said he felt that it will not be productive and will be very inflammatory.

Litigation has only inflamed passions on both sides of this debate. In addition to the critical habitat litigation, a recent notice of intent to sue by the Forest Guardians and others threatens to force the release of stored water in any of four New Mexico reservoirs to "maintain the riparian habitat necessary for the survival" of two endangered species.

I am concerned about water necessary for the survival of New Mexicans, their well-being and way of life. I can only hope that the potential needs of this silvery minnow will not drain reservoirs which Albuquerque, Santa Fe, and many others depend on for their water.

I do believe that something is terribly wrong when people who own rights to water have to forego usage or face penalties for "taking" of a species without knowing what amount of water is needed for that endangered species.

Incidentally, Mr. President, I grew up in Albuquerque, and I lived within about eight city blocks of this Rio Grande River. I can tell you, as anyone who has lived in New Mexico for very long can assert, that river ran dry plenty of times. Historical data collected before the irrigation projects or large population increases along the river showed it dried up consistently in certain places. I am no biologist, but that minnow survived.

I can assure you that the river water did not run down the entire length of the river from north to south, which is what some say we must do now for the survival of the silvery minnow.

Mr. President, it really is upsetting when I understand that some data available indicates that the minnow "needs" more water than the Rio Grande can provide, even without consideration of the needs of human users. How can critical habitat be designated without the consideration of all users and their needs along the river, especially if they have property rights and own the water?

Some irrigators may have to take their toothbrushes to work because they might be thrown in jail due to a "take" of fish that they have shared the wet and dry times with for many years.

I care about including the silvery minnow. I care about making sure we try our best to save the silvery minnow. I support the intent of the Endangered Species Act. I actually was here to vote in favor of it, and I did. Today, I agree with Secretary Babbitt that it is broken and does not work. I do not think the problem is necessarily what we designed in the legislation, but I think the court interpretations have made it unworkable.

Mr. President, I say to my colleagues, I know the mention of modifying the Endangered Species Act brings howls and scowls from some quarters, but I say to you today that it can and it must be improved. I am willing to work with my fellow Senators and the administration and those surrounding this issue on all sides to try to find some solutions to this problem, both nationally and for my State of New Mexico.

Mr. President, I yield the floor.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I ask unanimous consent to speak as in morning business for 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. MURRAY. Thank you, Mr. President.

MICROSOFT CORPORATION

Mrs. MURRAY. Mr. President, I rise today to talk about an issue of great importance to Washington State and our country. I know it is an issue the Presiding Officer, the Senator from Washington, shares concern with me. There has been a lot of talk in recent months in the media and on the Senate floor about Microsoft and the Department of Justice. I want to take a few minutes today on the Senate floor and share a few of my thoughts on Microsoft.

Recently, Microsoft's competitors and critics have portrayed Microsoft as a serious threat to the technology sector. I can speak from experience about Microsoft. The Microsoft I know is far different than the ruthless company that has been described in newspaper articles. My own professional and political career covers the 20-year period of Microsoft's growth from the first personal computers to today's innovative software programs which have spurred consumers and educators and students and the business community to the re-invention of their daily lives.

Almost everyone is familiar with Microsoft and its products. Bill Gates and Paul Allen, the company's founders, had one vision in mind—that one day every home and family would have a PC. It was an ambitious goal but one that seems more attainable every day. Through the years, the company has developed tremendous innovations in